

# STATE OF NORTH CAROLINA

File No. **19CV000025**

WAKE County

In The General Court Of Justice  
☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1  
 Mark E. Harris  
 c/o Crumpler Freedman Parker & Witt  
 860 West Fifth Street  
 Winston-Salem NC 27101

Name And Address Of Plaintiff 2

**VERSUS**

Name Of Defendant 1  
 The North Carolina Bipartisan State Board of Elections and  
 Ethics Enforcement a/k/a The North Carolina State Board of  
 Elections and Ethics Enforcement

Summons Submitted ☒ Yes ☐ No

Name Of Defendant 2

Summons Submitted ☐ Yes ☐ No

☐ Jury Demanded In Pleading  
☐ Complex Litigation

**GENERAL**

## CIVIL ACTION COVER SHEET

☒ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b), General Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Dudley A. Witt and David B. Freedman  
 Crumpler Freedman Parker & Witt  
 860 West Fifth Street  
 Winston-Salem NC 27101

Telephone No. 336-725-1304 Cellular Telephone No.  
 NC Attorney Bar No. 11155 / 10334 Attorney E-Mail Address  
 dudley@cfpwlaw.com / david@cfpwlaw.com

☒ Initial Appearance In Case ☐ Change of Address

Name Of Firm  
 Crumpler Freedman Parker & Witt

FAX No. 336-761-8845

Counsel for

☐ All Plaintiffs ☐ All Defendants ☒ Only (list party(ies) represented)

Petitioner

☐ Amount in controversy does not exceed \$15,000  
☐ Stipulate to arbitration

### TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND)
- ☐ Amended Answer/Reply (AMND-Response)
- ☐ Amended Complaint (AMND)
- ☐ Assess Costs (COST)
- ☐ Answer/Reply (ANSW-Response) (see Note)
- ☐ Change Venue (CHVN)
- ☐ Complaint (COMP)
- ☐ Confession Of Judgment (CNJF)
- ☐ Consent Order (CONS)
- ☐ Consolidate (CNSL)
- ☐ Contempt (CNTP)
- ☐ Continue (CNTN)
- ☐ Compel (CMPL)
- ☐ Counterclaim (CTCL) Assess Court Costs
- ☐ Crossclaim (list on back) (CRSS) Assess Court Costs
- ☐ Dismiss (DISM) Assess Court Costs
- ☐ Exempt/Waive Mediation (EXMD)
- ☐ Extend Statute Of Limitations, Rule 9 (ESOL)
- ☐ Extend Time For Complaint (EXCO)
- ☐ Failure To Join Necessary Party (FJNP)

(check all that apply)

- ☐ Failure To State A Claim (FASC)
- ☐ Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
- ☐ Improper Venue/Division (IMVN)
- ☐ Including Attorney's Fees (ATTY)
- ☐ Intervene (INTR)
- ☐ Interplead (OTHR)
- ☐ Lack Of Jurisdiction (Person) (LJPN)
- ☐ Lack Of Jurisdiction (Subject Matter) (LJSM)
- ☐ Modification Of Child Support In IV-D Actions (MSUP)
- ☐ Notice Of Dismissal With Or Without Prejudice (VOLD)
- ☐ Petition To Sue As Indigent (OTHR)
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA)
- ☐ Sanctions (SANC)
- ☐ Set Aside (OTHR)
- ☐ Show Cause (SHOW)
- ☐ Transfer (TRFR)
- ☐ Third Party Complaint (list Third Party Defendants on back) (TPCL)
- ☐ Vacate/Modify Judgment (VCMD)
- ☐ Withdraw As Counsel (WDCN)
- ☒ Other (specify and list each separately)  
 Petition for Writ of Mandamus and Appeal from the Failure of State Board to Act

**NOTE:** All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

# CLAIMS FOR RELIEF

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Administrative Appeal (ADMA)      | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State | <input type="checkbox"/> Product Liability (PROD)                            |
| <input type="checkbox"/> Appointment Of Receiver (APRC)    | <input type="checkbox"/> Convictions (PLDP)                       | <input type="checkbox"/> Real Property (RLPR)                                |
| <input type="checkbox"/> Attachment/Garnishment (ATTC)     | <input type="checkbox"/> Medical Malpractice (MDML)               | <input type="checkbox"/> Specific Performance (SPPR)                         |
| <input type="checkbox"/> Claim And Delivery (CLMD)         | <input type="checkbox"/> Minor Settlement (MSTL)                  | <input checked="" type="checkbox"/> Other (specify and list each separately) |
| <input type="checkbox"/> Collection On Account (ACCT)      | <input type="checkbox"/> Money Owed (MNYO)                        | Writ of Mandamus   |
| <input type="checkbox"/> Condemnation (CNDM)               | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG)        |  |
| <input type="checkbox"/> Contract (CNTR)                   | <input type="checkbox"/> Negligence - Other (NEGO)                |  |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Motor Vehicle Lien G.S. 44A (MVLN)       |  |
| <input type="checkbox"/> Injunction (INJU)                 | <input type="checkbox"/> Possession Of Personal Property (POPP)   |  |

Date

JAN. 3, 2018

Signature Of Attorney/Party

David B. Freedman SML

## FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)  
Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
Supplemental Procedures (SUPR)

## PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No. ☐ Additional Plaintiff(s)

No. ☐ Additional Defendant(s) ☐ Third Party Defendant(s)

Summons Submitted

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

## STATE OF NORTH CAROLINA

File No.

WAKE County

In The General Court Of Justice  
☐ District ☒ Superior Court Division

Name Of Plaintiff

Mark E. Harris

Address

P.O. Box 77451

City, State, Zip

Charlotte, N.C. 28271

VERSUS

## CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

The North Carolina Bipartisan State Board of Elections and Ethics Enforcement a/k/a The North Carolina State Board of Elections and Ethics Enforcement

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Kimberly Strach, Executive Director  
North Carolina State Board of Elections and Ethics Enforcement  
430 North Salisbury Street, 3rd Floor  
Raleigh, NC 27603

Name And Address Of Defendant 2



**IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!**

**¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!**

**Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!**

## A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If none, Address Of Plaintiff)

Dudley A. Witt and David B. Freedman  
CRUMPLER FREEDMAN PARKER & WITT  
860 West Fifth Street  
Winston-Salem, NC 27101

Date Issued

1-3-19

Time

8

☒ AM☐ PM

Signature

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Civil Action No. 18 CVS

2019 JAN -3 A. 8:56

MARK E. HARRIS,

*Petitioner,*

v.

THE NORTH CAROLINA BIPARTISAN  
STATE BOARD OF ELECTIONS AND  
ETHICS ENFORCEMENT a/k/a THE  
NORTH CAROLINA STATE BOARD OF  
ELECTIONS AND ETHICS  
ENFORCEMENT,

*Respondent.*

**PETITION FOR WRIT OF  
MANDAMUS AND APPEAL FROM  
THE FAILURE OF STATE BOARD TO  
ACT**

Pursuant to N.C. Gen. Stat §§163-22 and 163-182.14, and the inherent authority of the Court, Mark E. Harris (“Dr. Harris”), candidate for the United States House of Representatives in the North Carolina Ninth Congressional District, respectfully petitions this Court to issue a Writ of Mandamus directing the North Carolina Bipartisan State Board of Elections and Ethics Enforcement, through its Executive Director, Kimberly Strach, (“Respondent” or “State Board”), to authenticate and certify Dr. Harris as the winner of the 2018 North Carolina Ninth Congressional District (“9th District”) election, because the counties in said District previously authenticated the results of said election and no protest was filed relating to the conduct of the November 6, 2018 election in the 9th District. As such, the State Board was required by statute to ministerially authenticate said results by November 27, 2018, and certify the same by December 3, 2018. *See* N.C. Gen. Stat. §§ 163-182.5 and 182.15 (formerly §§ 163A-1172 and 1184). As of the date of the filing of this Petition, the State Board has not yet authenticated or certified the winner of the 9th District in contravention of state law. *Id.* Because (1) time is of the essence; (2) the former State

Board was promulgated pursuant to an unconstitutional statute and therefore any action taken by it is void *ab initio*; (3) the former State Board operated outside of any statutory authority; and (4) the new term for the incoming North Carolina State Board of Elections under N. C. Gen. Stat. §163-19(b) will not begin for many weeks, the uniform finality of a federal election is endangered by the State Board's actions and the citizens of the 9th District have no representation in Congress. As a result, Petitioner has no other recourse but to seek a writ from this Court directing the State Board, through its Executive Director, to authenticate and certify the election results in the 9th District.

In support of his request for a Writ of Mandamus, Petitioner shows the following:

## **I. PARTIES**

1. Petitioner, Mark E. Harris, is a citizen and resident of Charlotte, Mecklenburg County, North Carolina, who ran successfully for Congress in the November 6, 2018 general election in the 9th District.

2. Respondent, North Carolina Bipartisan State Board of Elections and Ethics Enforcement a/k/a the North Carolina State Board of Elections and Ethics Enforcement, is the state agency charged with the administration of the elections process, as well as campaign finance, ethics and lobbying disclosure and compliance.

3. The Executive Director of the State Board is charged with performing duties imposed by statute and assigned to her by the State Board.

4. The State of North Carolina is a sovereign State with its capital in Raleigh, Wake County, North Carolina.

## II. PROCEDURAL HISTORY

In recent years, the North Carolina General Assembly has enacted several variations of the legislation relating to regulations governing elections in North Carolina. Session Law 2017-6 was enacted into law on April 25, 2017 and, through its enactment, effectively reorganized two agencies, the North Carolina State Board of Elections and the State Ethics Commission, into the Bipartisan State Board of Elections and Ethics Enforcement. The reformulated State Board consisted of four members from each of the two largest political parties; the statute further provided that these individuals were to be selected from lists of nominees provided by the leaders of each party. On April 26, 2017, Governor Roy Cooper filed suit in Wake County Superior Court, Case No. 17 CVS 5084, challenging Sections 3 through 22 of Session Law 2017-6 and seeking to enjoin the enforcement thereof.

On October 31, 2017, the Wake County Superior Court submitted an Order to the Supreme Court certifying its findings of fact and conclusions of law which led to the court's decision to dismiss the action under Rule 12(b)(1) and also provided its unanimous ruling that Session Law 2017-6 was not unconstitutional. On January 26, 2018, the Supreme Court reversed and remanded the Superior Court's Order, finding that the merger of the State Board of Elections and the Ethics Commission was a constitutional exercise of the General Assembly's authority, but also finding that certain provisions of Session Law 2017-6 relating to the membership of and appointment of members to the State Board were unconstitutional. *See Cooper v. Berger*, 370 N.C. 392, 809 S.E.2d 98 (2018).

On March 5, 2018, after the case was remanded to the Superior Court for entry of final judgment, a three-judge panel authorized by the Chief Justice of the North Carolina Supreme Court declared N.C. Gen. Stat. § 163A-2 **void and of no effect**, and the court thereafter permanently enjoined the State Board from further action related to matters outlined in the statute. (Emphasis

added). Pursuant to N. C. Gen. Stat. §1-253 *et seq.* and North Carolina Rule of Civil Procedure 57, the Court entered its final judgment as follows:

- a. Declaring that Part VIII of Session Law 2018-2 (House Bill 90) is unconstitutional and therefore void and of no effect.
- b. Declaring that Section 17 of Session Law 2017-6 is unconstitutional and therefore void and of no effect.
- c. Declaring that Section 7 (H) of Session Law 2017-6 is unconstitutional and therefore void and of no effect.
- d. Declaring that Section 7 (H) of Session Law 2017-6 and Section 8 (b) of Session Law 2018-2 (House Bill 90) are unconstitutional and therefore void and of no effect.
- e. Permanently enjoining Part VIII of Session Law 2018-2 in its entirety, and Sections 3 through 22 of Session Law 2017-6 in their entirety.

The Court then suspended its injunction against the enforcement of the portions of Section 8(b) of Session Law 2018-2 that enacted N.C. Gen. Stat. § 163A-2(a)-(e), in order to allow the then-current, nine-member State Board to continue to serve until the results of the November 2018 elections were certified by the State Board. On October 22, 2018, the Court extended the stay through December 3, 2018, and on December 3, the Court, *sua sponte*, extended the stay for a third time - through noon on December 12, 2018. The Court then, on December 11, 2018, after the Chairman of the State Board represented to the Court that the State Board would complete its work regarding the 2018 general election after an evidentiary hearing regarding the 9th District congressional election on December 21, 2018, extended the stay once again until December 28, 2018.

On December 27, 2018, the same three-judge panel issued an Order addressing the Joint Motion to Extend the Stay in the above-captioned case. In said Order, the three-judge panel, authorized by Order of the Chief Justice of the Supreme Court of North Carolina, found as facts, among other findings, the following:



3. The extension of the Stay was in full recognition of the need for stability and the orderly function of the Board during its work in dealing with the elections which had not been certified and the integrity of the decisions of the Board, such as not to confuse or negatively impact the confidence of the people in the results of the elections.
11. The day after the final extension of the Stay was entered, the State Chairman of the Board of Elections and Ethics Enforcement published a discovery and hearing schedule which completely and totally disregarded the timetable established by the extension of the Stay indicating a complete disregard for an Order of this Court;
12. The parties have not given even a cursory explanation as to why the hearing was continued from December 28, 2018 until January 11, 2019, let alone one demonstrating compelling reasons and substantial and reasonable justification, for not only the additional time needed, but the total disregard of the previous Order of the Court in extending the Stay;

Based upon the above facts, the Court finds that:

...

2. The fact remains that a critical election hangs in the balance, and the voters of the Ninth Congressional District are entitled to have their elected representative in place by the time Congress convenes, or to know why they will not have their representative in place, and further to know with certainty what action is being taken to ensure they are properly represented in the important matters before congress;

A copy of the December 27, 2018 Order is attached hereto and incorporated herein by reference as "Exhibit A." As a result of the December 27, 2018 Order of the three-judge panel, the previous State Board was, in effect, disbanded as of noon on December 28, 2018. On the same day, the North Carolina Legislature adopted Session Law 2018-146, which provides that the part of the law establishing the new State Board of Elections takes effect on January 31, 2019 and that the terms of office of the new State Board will commence on May 1, 2019.<sup>1</sup> Because of said legislative action, the winner of the 9th District election cannot, without Court intervention, officially be certified until the new State Board is operational. As such, as noted by the three-

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<sup>1</sup> See N.C. Gen. Stat. § 163-19(b) ("The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 2019.")

judge panel, the voters of the 9th District will not have “their elected representative in place by the time Congress convenes,” nor will they “know why they will not have their representative in place, and further to know with certainty what action is being taken to insure that they are properly represented in the important matters before congress.” (See “Exhibit A”).

Upon receiving notice of the December 27, 2018 Order from the three-judge panel, the Mark Harris for Congress Committee (“Harris Committee”) filed with the State Board an Emergency Petition to Certify Election. By letter dated December 28, 2018, the former Chairman of the State Board informed the Harris Committee that he refused to call a meeting to discuss the Emergency Petition to Certify Election and that only two members of the Board of Elections desired to call a meeting before the then-existing State Board was disbanded. As a result, the Emergency Petition to Certify Election was not affirmatively determined by State Board.

It is apparent that, prior to the adoption of Session Law 2018-146, a request was made for an opinion from the Attorney General of the State of North Carolina as to the effect of the October 16, 2018 Order of the three-judge panel in *Cooper v. Berger*, No. 18 CVS 3348 on the structure and composition of the State Board. Thereafter, on November 28, 2018, Chief Deputy Attorney General Alexander Peters opined in an Advisory Letter that it was the position of the North Carolina Attorney General’s Office that: “after the stay of the Order expires, and until the enactment of revised legislation, N.C. Gen. Stat. § 163-19 . . . will again govern the composition of the Board and appointment of its members.” A copy of said Advisory Opinion is attached hereto and incorporated herein by reference as “Exhibit B.”

Part III, Section 3.1(a) of Session Law 2018-146, provides for the Revisor of Statutes to re-recodify Chapter 163A of the General Statutes back into Chapters 163, 138A, and 120C of the General Statutes, subject to the other provisions in Session Law 2018-146. A copy of Session Law

2018-146 is attached hereto and incorporated herein by reference as “Exhibit C.” This is consistent, in effect, with the Attorney General's Advisory Letter that the provisions of Chapter 163 of the North Carolina General Statutes would control once these provisions take effect. Petitioner is informed and believes that such re-recodification has not occurred.

Part III, Section 3.5(b) of Session Law 2018-146, provides that actions may still be instituted against the "Bipartisan State Board of Elections and Ethics Enforcement" through January 31, 2019, and that the "State Board of Elections" may be substituted thereafter upon re-recodification of Chapter 163. For purposes of this Petition, and for purposes of all actions to be taken hereafter, Session Law 2018-146, which the General Assembly passed on December 27, 2018, over Governor Cooper's December 12, 2018 veto, and Chapter 163 of the North Carolina General Statutes, as re-established by operation of law, are the proper authorities under which Petitioner submits this Petition.

As such, the Petitioner respectfully requests the Court to issue, under its inherent authority, a Writ of Mandamus to the Executive Director of the State Board to perform immediately the administrative act of certifying the results of the 9th District election in accordance with the county board of education's authentication of the election results to ensure the continuous representation in Congress in 2019 for the citizens of the 9th Congressional District. This Court provides the only available avenue to protect the citizens of the 9th Congressional District from being denied congressional representation as Congress prepares to be seated on January 3, 2019.

### **FACTUAL BACKGROUND**

The 2018 Election for the 9th District was held on November 6, 2018. The 9th District covers eight North Carolina counties: Mecklenburg, Union, Anson, Richmond, Scotland, Robeson, Cumberland, and twelve of seventeen precincts in Bladen County. By the end of the night of the election, Dr. Harris, the Republican Party nominee, led Dan McCready (“Mr. McCready”), the

Democratic Party nominee, by 1860 votes.

N.C. Gen. Stat. § 163-182.5 (formerly § 163A-1172(b)) requires that each North Carolina county board of elections meet at 11:00 a.m. on the tenth day following an election (November 16, 2018 in this case) to “complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly.” The respective county boards of election for Mecklenburg, Union, Anson, Richmond, Scotland, Robeson, Cumberland, and Bladen counties did, in fact, meet on or about November 16, 2018, and completed the canvass of votes cast and authenticated the count in every ballot item in the respective county by determining that the votes were counted and tabulated correctly.

Similarly, pursuant to N.C. Gen. Stat. § 163-182.5 (formerly § 163A-1172(c)), the State Board of Elections was required to meet at 11:00 a.m. on November 27, 2018 (three weeks after election day) to “complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly.” At this point after completion of the canvass, the certified vote totals again had Dr. Harris leading Mr. McCready, now with a final a vote count of 139,246 to 138,341, respectively, with Jeff Scott (Libertarian) receiving 5,130 votes. Thus, Dr. Harris’s margin of victory over Mr. McCready was 905 votes. Neither Mr. McCready, Mr. Scott, nor any registered voter in the 9th District filed an election protest over the results of the 9th District election, and Mr. McCready did not ask for a recount of the results of the 9th District election.

Pursuant to N.C. Gen. Stat. § 163-182.15 (formerly § 163A-1184), the State Board “*shall* issue a certificate of nomination or election . . . [within] six days after the completion of the canvass pursuant to § 163-182.5 (formerly § 163A-1172), *unless there is an election protest*

*pending.*” (Emphasis added). The State Board did, in fact, meet for canvass on November 27, 2018 but, despite the absence of a protest by any registered voter in the district, still refused to authenticate or certify Dr. Harris as the winner of the 9th District election without any substantive explanation. A press release issued on November 27, 2018 by Patrick Gannon, the Public Information Officer of the State Board of Elections, stated:

The State Board did not certify the results of the 9th Congressional District race. In his motion, Board Vice Chairman Joshua Malcolm cited the Board’s authority under G.S. 163A-1180 as the reason for delaying certification of that contest.

That statute gives the Board the authority to **“take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election.”**

(Emphasis in original). A true and accurate copy of Mr. Gannon’s press release is attached hereto and incorporated herein by reference as “Exhibit D.” The State Board offered no further explanation to Dr. Harris, the Harris Committee, or the public as to why Dr. Harris was not certified as the winner of the 9th District election despite his clear vote lead. The State Board recessed its November 27, 2018 meeting until November 30, 2018.<sup>2</sup>

On November 30, 2018, the State Board reconvened the November 27, 2018 meeting. At the start of the meeting, the State Board immediately and inexplicably voted to go into closed session, purportedly pursuant to N.C. Gen. Stat. § 143-318.11. After spending almost three (3) hours in closed session, the State Board did not certify Dr. Harris as the winner of the 9th District election. Specifically, the State Board passed a motion proposed by Vice Chairman Josh Malcolm, setting an evidentiary hearing on the conduct during the 9th District election on or before

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<sup>2</sup> The public notices of the November 27, 2018 and November 30, 2018 meetings provided no notice that the State Board would consider the 9th District election. A true and accurate copy of the State Board’s public notices for both meetings is attached hereto and incorporated herein by reference as “Exhibit E.”

December 21, 2018, purportedly under the provisions of N.C. Gen. Stat. § 163A-1180<sup>3</sup> and 1181,<sup>4</sup> in light of claims of irregularities with regard to absentee-by-mail voting in Bladen County.

Despite the lack of any protest or recount request, and in direct contravention of N.C. Gen. Stat. § 163A-1172(c) and N.C. Gen. Stat. § 163A-1184(b), the State Board, prior to its dissolution by court order dated December 27, 2018 and after a request by Petitioner to certify the same, refused to authenticate or certify the results of the 9th District election, or to otherwise make information about their actions public.

### **III. ISSUES PRESENTED AND RELIEF SOUGHT**

The issues presented in this Petition are:

- 1.) Whether the refusal by the State Board of Elections to perform the ministerial act of authenticating and certifying the election results as required by N.C. Gen. Stat. § 163-182.5 (formerly § 163A-1172(c)) and N.C. Gen. Stat. § 163-182.15 (formerly § 163A-1184(b)) was a violation of said statutes.

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<sup>3</sup> N.C. Gen. Stat. § 163-182.12 (formerly § 163A-1180), entitled “Authority of State Board over protests” sets forth the procedure for initiating and overseeing protests and reads: “The State Board of Elections may consider protests that were not filed in compliance with G.S. § 163-182.9 (formerly § 163A-1177), may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval or where a known group of voters was given an incorrect ballot style, the State Board of Elections may authorize a county board of elections to allow those voters to recast their votes during a period of two weeks after the canvass by the State Board of Elections required in G.S. § 163-182.5(c) (formerly § 163A-1172(c)). If there is no State Board canvass after the election, the State Board may authorize the county board to allow the recasting of votes during the two weeks after the county canvass set in G.S. § 163-182.5(a) (formerly § 163A-1172(a)). If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. § 163-182.13 (formerly § 163A-1181). No registered voter in the 9th District has filed an election protest over the results of the 9th District election and Mr. McCreedy has not asked for a recount of the results of the 9th District election.

<sup>4</sup> N.C. Gen. Stat. § 163-182.13 (formerly § 163A-1181) sets forth the procedures by which the State Board of Elections shall determine when and how a new election may be held.

2.) Whether any action taken by a State Board of Elections now disbanded by Court Order dated December 27, 2018 has any force or effect.

Petitioner seeks the following relief:

A writ of mandamus issued to Respondent, through its Executive Director, Kimberly Strach, directing Respondent to authenticate and certify Dr. Harris as the winner of the 9th District Congressional election.

#### **IV. ARGUMENTS**

The party seeking a writ of mandamus must demonstrate each of the following requirements: (1) he has a clear and indisputable right to the relief sought; (2) the responding party has a clear duty to do the specific act requested; (3) the act requested is an official act or duty; (4) there are no other adequate means to attain the relief he desires; and (5) the issuance of the writ will effect right and justice in the circumstances. *Earley v. Braxton (In re Braxton)*, 258 F.3d 250, 261 (4th Cir. 2001).

In effect, this statute provides no authority for the Governor to appoint an “interim” Board, and no Board can act with any statutory grant of authority until Session Law 2018-146 allows for action to be taken. Taken together, the binary conclusion drawn from the plain language of the new statute, and guidance from the Chief Deputy Attorney General is that since the State Board of Elections was effectively deemed unconstitutional at the expiration of the stay on December 28, 2018, there will be no State Board authorized by statute to certify the results of the November 2018 election for many weeks.

In the Order issued on December 27, 2018, the three-judge panel reinforced the importance to the constituents of the 9th District to have their elected U.S. House representative in place by

the time Congress convenes. It is incomprehensibly disadvantageous to the constituents of the 9th District to lack a representative in Congress for any period of time, no less for the extended period until the new State Board is operational.<sup>5</sup>

In a similar case involving the unusual situation where the State Board sits vacant, the Wake County Superior Court has previously determined that, “[i]n the absence of appointed and sworn members on the State Board of Elections decisions of the county boards of elections on election protests under Article 15A of Chapter 163 of the General Statutes are final and lack any additional administrative process.” Moreover, the court determined that it “has inherent authority to supply necessary relief to parties whose legal rights are affected by a vacant State Board and to preserve the uniform and orderly operation of elections administration.” *Furgieuele v. State Board*, 17 CVS 15132 (N.C. Super. Ct., Dec. 14, 2017). (See attached “Exhibit F”).

In the same case, the Honorable Paul C. Ridgeway determined that the inability of the State Board to act is effectively considered to be a denial by the State Board. Given the unique circumstances surrounding the prior State Board being permanently enjoined to act by a three-judge panel of Superior Court Judges, and the timeline that Session Law 2018-146 sets forth for the establishment and operation of the new State Board designed specifically by statute to continue matters handled by the prior unconstitutional State Board, a gap in operations has been created, but Petitioner does not assert a denial of certification has occurred here. Nonetheless, to the extent this Court or another Court of competent jurisdiction determines that the inability of the State Board to act (based on the prior statute establishing the prior State Board being declared

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<sup>5</sup> The arbitrary deadlines published by the Chairman of the State Board were deemed to “completely and totally disregard[] the timetable established by the extension of the Stay, indicating a complete disregard for an Order of this Court” in the court’s December 27, 2018 Order. Thus, not only was the scheduling in the case arbitrary, it was established in contempt of an Order of the court.



unconstitutional, the dissolution of the stay of the injunction that kept the prior unconstitutional State Board operational until noon on December 28, 2018, and the fact that a new State Board does not become operational for several weeks under Session Law 2018-146) renders a denial of certification to have occurred, this action should be accepted as an appeal to the Wake County Superior Court pursuant to N.C. Gen. Stat. § 163-182.14 (comparable to former N.C. Gen. Stat. § 163A-1183) and other applicable law.

This Petition is not intended to be mutually exclusive of the currently pending State Board investigation; to the contrary, Petitioner has been, and continues to remain, willing to proceed with the current investigation into allegations of voter irregularities during the November 6, 2018 election. In fact, Section 3.5(a)-(e) of Session Law 2018-146 generally states that reorganization under the re-codified act should not affect any current proceeding. However, the pending investigation cannot proceed under the auspices of a State Board that was convened under a statute that has been deemed unconstitutional. With the extended period of time between the filing of this Petition and the date the new State Board becomes operational, the issuance of a Writ of Mandamus is proper in this case as the Petitioner has established a clear legal right to the immediate issuance of a certificate of election, no facts have been presented by the State Board or any other party indicating that election irregularities affected the result of the election or that the extraordinarily high standard for calling a new election has been met, and the Executive Director of the now disbanded State Board “is obligated to effectuate the administration of elections in conformity with law.” (See attached “Exhibit F”).

Here, the State Board's refusal to certify the results of the election in the 9th District, in contravention of a state statute enacted by North Carolina's General Assembly, effectively replaces the wills of the voters and Legislature with its own. Petitioner has a clear and indisputable right to

be certified as the victor in the 9th District. *In re Braxton*, 258 F.3d 250, 261 (4th Cir. 2001). Petitioner is directly harmed by this constitutional violation because the Board's action (or inaction) prevents Dr. Harris from being certified as the winner of the election in the 9th District.

The U.S. Constitution's Elections Clause provides that "[t]he Times, Places and Manner" of Congressional elections "shall be prescribed in each State by the Legislature thereof" unless "Congress" should "make or alter such Regulations." U.S. CONST. art. I, § 4 (emphasis added). It vests authority in two locations: (1) the state legislature and (2) Congress. Accordingly, the State Board may only regulate the times, places, and manner of elections, including the certification processes, in North Carolina to the extent the legislature has delegated such authority to it.

That principle is plain from the text of Article I, § 2 itself: the word "Legislature" was "not one 'of uncertain meaning when incorporated into the Constitution.'" *Smiley v. Holm*, 285 U.S. 355, 365 (1932) (quoting *Hawke v. Smith*, 253 U.S. 221, 227 (1920)). The term "Legislature" necessarily differentiates between that body and the "State" of which it is but a subpart. And by empowering one body of the state to prescribe election rules, the Constitution impliedly denies it to others.

That obvious plain-text conclusion is also evident from several points of context. One is that the power to regulate federal elections is incident to the Constitution's establishment of a federal government; it is not an inherent state power. *U.S. Term Limits v. Thornton*, 514 U.S. 779, 805 (1995); *Cook v. Gralike*, 531 U.S. 510, 522 (2001). Thus, it "had to be delegated to, rather than reserved by, the states." *Cook*, 521 U.S. at 522 (quotations omitted). Because the delegation necessarily confines the scope of power, the term "Legislature" is "a limitation upon the state in respect of any attempt to circumscribe the legislative power" over federal elections. *McPherson v. Blacker*, 146 U.S. 1, 25 (1892).

Another contextual reference point comes from the framing debates and early commentaries. Though all concerned parties appreciated that state legislatures may abuse their authority over election rules, none of them even proposed that other branches of state government may exercise a check on such abuse. Instead, they viewed Congress as the exclusive check. *See* THE FEDERALIST NO. 59 (Alexander Hamilton). That check, expressed directly in the Constitution's text, parallels the judicial-type functions Congress performs in other quintessentially legislative affairs, as described in adjacent constitutional provisions. *See* U.S. CONST. art. I, §§ 2-5. It was, furthermore, assumed that even Congress would exercise its prerogative to override state legislatures' regulations only "from an extreme necessity, or a very urgent exigency." 1 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 820 (3d ed. 1858). This was because the power "will be so desirable a boon" in the "possession" of "the state legislatures" that "the exercise of power" in Congress would (it was thought) be highly unpopular. *Id.*

In accordance with its mandate under Article 1, Section 4 of the United States Constitution, the North Carolina legislature provided for the orderly conduct of elections by statute. Specifically, the legislature passed, *inter alia*, Section 163-182.5 (formerly § 163A-1172), which sets forth the procedure for canvassing and authenticating of the official election results. N.C. Gen. Stat. § 163-182.5 (formerly § 163A-1172) provides:

(a) The Canvass. -- As used in this Part, the term "canvass" means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. -- The county board of elections shall meet at 11:00 A.M. on the tenth day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election

officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board. -- After each general election, the State Board shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. . . . If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties.

N.C. Gen. Stat. § 163-182.5 (formerly § 163A-1172) (emphasis added). Similarly, the legislature passed N.C. Gen. Stat. § 163-182.15 (formerly § 163A-1184), which sets forth, *inter alia*, the procedure the State Board of Elections must undertake to certify election results. The relevant portions of N.C. Gen. Stat. § 163-182.15 (formerly § 163A-1184) provide:

(a) Issued by County Board of Elections. -- In ballot items within the jurisdiction of the county board of elections, the county board shall issue a certificate of nomination or election. . . The certificate shall be issued by the county board six days after the completion of the canvass pursuant to G.S. 163A-1172, unless there is an election protest pending.

. . .

(b) Issued by State Board. -- In ballot items within the jurisdiction of the State Board, the State Board shall issue a certificate of nomination or election. . . The certificate shall be issued by the State Board six days after the completion of the canvass pursuant to G.S. 163A-1172, unless there is an election protest pending.

. . .

(c) Copy to Secretary of State. -- The State Board shall provide to the Secretary of State a copy of each certificate of nomination or election. .. The Secretary shall keep the certificates in a form readily accessible and useful to the public.  
N.C. Gen. Stat. § 163A-1184 (emphasis added).

Through N.C. Gen. Stat. §§ 163-182.5 and 163-182.15 (formerly §§ 163A-1172 and 163A-1184), the North Carolina legislature has delegated its authority to authenticate and certify election results to the State Board, but in doing so has mandated that the State Board must do so within three-weeks and three-weeks and six-days after an election day, respectively, **absent a protest or recount**. (Emphasis added). As noted previously, no registered voter in the 9th District has filed an election protest and Mr. McCready has not asked for a recount of the results of the 9th District election. Therefore, the State Board has the “clear duty to” authenticate and certify election results, which constituted an “official act or duty.” *In re Braxton*, 258 F.3d at 261;

Accordingly, by refusing to authenticate election results by November 27, 2018 and certify the results by December 3, 2018, and by entering Orders related to this matter by a State Board appointed by an unconstitutional statute, the State Board of Elections has acted outside of the scope of its authority as delegated by the North Carolina legislature. In acting outside of its delegated authority, and having been disbanded by court order due to the fact that the statute by which the State Board was appointed has been found to be unconstitutional, the State Board has itself improperly prescribed the time and manner of the November 6, 2018 election procedures, despite clear, unequivocal, and contrary decisions by the North Carolina legislature—a violation of Article I, § 4 of the United States Constitution.

The Board’s apparent reliance on N.C. Gen. Stat. § 163A-1180 (now § 163-182.12) to justify its usurpation of legislative authority is unavailing since that section clearly only applies to the “Authority of State Board over *protests*” (emphasis added) and since a formal protest has not been filed by anyone relating to the 9th District. Regardless, the State Board’s refusal to authenticate or certify the election results for the 9th district is an unconstitutional usurpation of legislative power by the State Board which must be prevented by this Court.

Because North Carolina law mandates that the State Board authenticate and certify the 9th District election under the circumstances presented by the unique facts of this case Mandamus is the appropriate form of relief. The State Board is under an affirmative duty to supervise the elections of the State. See N.C. Gen. Stat. § 163-22 (formerly § 163A-741). Respondent here is under legal obligation to perform the act of authenticating and certifying the election, as it is required to do so under N.C. Gen. Stat. §§ 163-182.5 and 182.15 (formerly §§ 163A-1172, 163A-1184). With no protest pending and no court order in effect, Respondent had no discretion or authority to refuse to authenticate or certify the election results from the 9th District.

Should this Court grant the Petition and order the Writ as Petitioner requests, this is a narrow ruling that would likely affect no future elections. Nor would it set any dangerous precedent preventing the review of potentially fraudulent election results. As discussed above, in the ordinary course, the registered voters of the 9th District and State Board are entitled to initiate a protest when they reasonably believe that an irregularity has occurred. N.C. Gen. Stat. § 163-182.12 (formerly § 163A-1180). The State Board in recent rulings has emphasized how timely compliance with the rules on challenges and protests serve the interests of voters and allow elections to be conducted and regulated with certainty in process, uniformity in application and finality of results. The relief Petitioner requests in this writ is simply in line with that guidance—ensuring uniformity in application and finality of results.

The Petition for a Writ of Mandamus seeks enforcement of the Petitioner's right to a duly issued certificate of election in order to assume his seat in the United States Congress. The Petitioner should have assumed the seat to which he is now legally entitled following the County Boards' authentication of his election. Thus, not only is Dr. Harris being harmed by being prevented from holding the seat to which he was duly elected, the citizens of the 9th District of

North Carolina will be adversely affected unless and until their elected representative is seated in Congress.

**V. PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully prays the Court for the following relief:

1. That the Court issue a Writ of Mandamus to Respondent ordering it to authenticate and certify the election results and winner of the 9th District Congressional election;
2. That, to the extent the Court finds the disbanding of the prior State Board of Elections to make it unable to act to be a denial of Petitioner's request or other right to certification of the election results, this action be accepted and treated as an appeal to the Wake County Superior Court pursuant to N.C. Gen. Stat. § 163-182.14 and other applicable law, and that the Superior Court act on such appeal in accordance with law;
3. That the Court issue an Order setting a hearing on the petition at the Court's earliest convenience, and allow either party to submit further briefing as desired;
4. For such other and further relief as the Court deems necessary or appropriate.

(Signature page follows)

Respectfully submitted, this the 3d day of January, 2019.

CRUMPLER FREEDMAN PARKER & WITT  
Attorneys for Mark E. Harris

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NORTH CAROLINA     )  
                                  )  
WAKE COUNTY         )

**VERIFICATION**

MARK E. HARRIS, first being duly sworn, deposes and says:

That he is the Petitioner in the foregoing action; that he has read the foregoing **PETITION FOR WRIT OF MANDAMUS AND APPEAL FROM THE FAILURE OF STATE BOARD TO ACT** and knows the contents thereof; that the same is true of his own knowledge except those matters and things set out on information and belief and as for those matters and things, he believes them to be true.

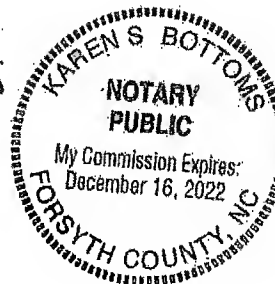
  
MARK E. HARRIS

SWORN TO and subscribed before me this  
the 2nd day of January, 2019.

  
Notary Public Karen S. Bottoms

My Commission Expires:

12-16-22



STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

18CVS3348

2018 DEC 27 P 13

ROY A. COOPER, III, in his official capacity  
as GOVERNOR OF THE STATE OF  
NORTH CAROLINA,

Plaintiff,

vs.

PHILIP E. BERGER, in his official capacity  
as PRESIDENT PRO TEMPORE OF THE  
NORTH CAROLINA SENATE; TIMOTHY  
K. MOORE, in his official capacity as  
SPEAKER OF THE NORTH CAROLINA  
HOUSE OF REPRESENTATIVES; and THE  
STATE OF NORTH CAROLINA,

Defendants.

ORDER

This Cause, coming on before the undersigned duly constituted Three Judge Panel to consider the Emergency Motion of McCreedy for Congress, filed on the 21<sup>st</sup> day of December 2018, to Intervene in this action and to extend the stay issued by the Court; and the Motion of Mark Harris for Congress, filed on the 30<sup>th</sup> day of November, 2018, to Intervene in this action and to extend the stay issued by the Court. The Court, in its discretion, GRANTS the Motions of both Parties to Intervene in this Action.

The Court, having granted the Motions of Harris and McCreedy to Intervene, now addresses the Motion of all parties to Extend the Stay of the Court. The Court finds as follows:

1. The Court issued its Order declaring the composition of the Bipartisan Board of Elections and Ethics Unconstitutional on October 16, 2018. Recognizing the close proximity to the November elections, the Court Stayed that Order through and including the November elections;
2. On October 22, 2018 the Court extended that stay through and including 11:59 on December 3, 2018 to allow for the certification of the November elections;



3. On December 3, the Court entered an order, sua sponte, extending the stay for the third time, through noon on December 12, 2018. The extension of the Stay was in full recognition of the need for stability and the orderly function of the Board during its work in dealing with the elections which had not been certified, and the integrity of the decisions of the Board, such as not to confuse or negatively impact the confidence of the people in the results of the elections. We still adhere to these principles and public policies;
4. On December 10, 2018, Chairman Joshua Malcom wrote a letter to the Court in response to a request by the Court for an update on the status of the progress of election certification, in which he stated that:
  - a. On November 27, the State Board voted 7-2 in support of a motion ordering an evidentiary hearing on or before December, 21, 2018 regarding elections not yet certified.
  - b. That the "Agency staff are working diligently", and that "Should the Panel wish to provide continuity during the remainder of this process, be assured we will endeavor to resolve outstanding matters as quickly as we responsibly can do so."
5. The day after receiving this letter, the Court issued its 4th stay in an Order filed on December 11. Acting in good faith upon the assertion and understanding that the Board was to conduct a hearing on December 21, the stay was extended a week beyond that date, "until 12:00 Noon, Friday December 28, 2018 or until the November 2018 statewide elections are certified, whichever occurs first.";
6. One day after the Court entered its Order extending the stay, Chairman Malcom on December 12, 2018 wrote an unsolicited letter to the Court. At the direction of the Court, the Trial Court Administrator for Wake County inquired of counsel if they desired her to deliver this letter to the Court. Legislative Defendants' counsel consented. To date, however, to our knowledge, all counsel have not yet consented for the Court to receive this unsolicited letter from a non-party to this action. Accordingly, the Court has not received nor reviewed that correspondence. Paragraph 15 of the Joint Motion to Extend the Stay refers to Chairman Malcom's December letter being sent to the Court, implying the court has received and considered the contents of that letter, which is not a correct inferred statement of fact;
7. Paragraph 16 of the Joint Motion states, "Thereafter, on December 17, 2018 (which is 6 days after this court for the 4th time extended the stay, based on the representation that the Board was conducting a Dec. 21 hearing), Chairman Malcom issued an Order of Proceedings for a hearing at 10:00 am on January 11, 2019, and not as previously thought on December 21, 2018." Nowhere in the Joint Motion is there any explanation as to why the hearing was erroneously "thought" to be on December 21, since that is the deadline date expressly

provided for in the motion adopted by the Board on November 27, 2018; and nowhere in the Joint Motion is there any explanation as to why the hearing was continued from December 21, 2018 until January 11, 2019;

8. Paragraph 18 of the Joint Motion states that the January 11 hearing is estimated to take between "one to two" days and that deliberations will begin on the same day the hearing ends. The State Board anticipates a decision regarding certification within a reasonable time following deliberations, determination and written order regarding certification or the need for a new election during the week of January 14.";
9. Paragraph 22 of the Joint Motion states that "It appears that the State Board will be able to certify the remaining contests or establish the need for a new election by January 18, 2019.";
10. It appears to the Court that had the hearing been conducted on December 21, 2018, this same 7 day time frame would have allowed for the Board to render its decision on certification or the need for a new election by the deadline of the 4th stay, 12:00 Noon on December 28, 2018;
11. The day after the final extension of the Stay was entered, the State Chairman of the Board of Elections and Ethics Enforcement published a discovery and hearing schedule which completely and totally disregarded the timetable established by the extension of the Stay, indicating a complete disregard for an Order of this Court; and
12. The parties have not given even a cursory explanation as to why the hearing was continued from December 28, 2018 until January 11, 2019, let alone one demonstrating compelling reasons and substantial and reasonable justification, for not only the additional time needed, but the total disregard of the previous Order of the Court in extending the Stay;

Based upon the above facts, the Court finds that:

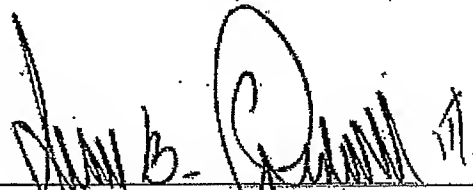
1. The further extension of the Stay in this action is not justified in light of the failure of the Board to comply with the previous Orders of this Court. The Court has no reason to believe that the January timetable proposed by the Board would be followed any more than the other timetables have been;
2. The fact remains that a critical election hangs in the balance, and the voters of the Ninth Congressional District are entitled to have their elected representative in place by the time Congress convenes, or to know why they will not have their representative in place, and further to know with certainty what action is being

taken to insure they are properly represented in the important matters before congress; and

3. This Court does not take lightly its duty to rule on the issues before it, and expects the Orders of this court to be complied with fully, completely and in a timely manner. That has not occurred in this instance.

It is Therefore the ruling of the Court that the Motion to further Extend the Stay of the Courts October 16, 2018 Order is DENIED. The Stay will dissolve at Noon on December 28, 2018:

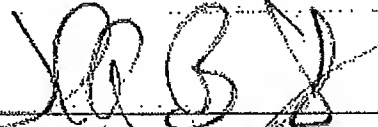
SO ORDERED, this the 27<sup>th</sup> day of December, 2018.



The Honorable Jesse B. Caldwell, III



The Honorable L. Todd Burke



The Honorable Jeffery B. Foster

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served on all parties by serving counsel as indicated below by U.S. Mail, postage prepaid, addressed as follows:

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This the 27<sup>th</sup> day of December, 2018.

  
Kellie Z. Myers  
Wake County Trial Court Administrator  
PO Box 1916  
Raleigh, NC 27602

JOSH STEIN  
ATTORNEY GENERAL



Alexander McC. Peters  
Chief Deputy Attorney General

November 28, 2018

William C. McKinney  
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Office of the Governor of North Carolina  
20301 Mail Service Center  
Raleigh, NC 27699-0301

VIA EMAIL AND U.S. MAIL

**Re: Advisory Letter—Effect of October 16, 2018, Order of Three-Judge Panel in  
*Cooper v. Berger*, No. 18 CVS 3348 (N.C. Sup. Ct.)**

Dear Mr. McKinney:

This advisory letter responds to your recent inquiry about the effect of the October 16, 2018, Order of the three-judge panel in *Cooper v. Berger*, No. 18 CVS 3348 (N.C. Sup. Ct.) on the structure and composition of the North Carolina Bipartisan State Board of Elections and Ethics Enforcement.

On October 16, the three-judge panel in *Cooper v. Berger* held certain sections of Session Law 2017-6 and Session Law 2018-2 to be unconstitutional and therefore void and of no effect. The court permanently enjoined sections 3 to 22 of Session Law 2017-6 and Part VIII of Session Law 2018-2 in their entirety. Through a subsequent order, that order was stayed until December 3, 2018.

This advisory letter concludes that, after the stay of the Order expires, and until the enactment of any revised legislation, N.C. GEN. STAT. § 163-19, as codified before the enactment of Session Law 2016-125, will again govern the composition of the Board and the appointment of its members. As a result, during that time, the Board returns to the form in which it existed prior to the enactment of Session Law 2016-125, *i.e.*, composed of five members appointed by the Governor, and no longer charged with enforcing North Carolina's ethics laws.

This conclusion results from the well-established principle that "an unconstitutional law is void and is as no law." *State v. Williams*, 146 N.C. 618, 621, 61 S.E. 61, 62 (1908). Under this principle, when a statute that purports to repeal a prior law is itself held unconstitutional, the prior law is once again effective. *See Bd. of Managers James Walker Mem'l Hosp. v. Wilmington*, 237 N.C. 179, 74 S.E.2d 749, (1953) (holding that, after a statute purporting to repeal prior law is held unconstitutional, the repeal in the unconstitutional statute does not have any effect); *Allen v.*



*Raleigh*, 181 N.C. 453, 457, 107 S.E. 463, 465 (1921) (where a statute, which contained a clause repealing an earlier statute, was itself held unconstitutional, the earlier statute remained in full force and effect).

Here, the Order holds unconstitutional and enjoins Part VIII of Session Law 2018-2, which created a Board that consists of nine individuals, appointed by the Governor from two lists of six individuals provided by the State party chairs of the political parties with the two highest number of registered affiliates and one individual not registered with either political party nominated by the other eight members of the Board. Sess. Law 2018-2, § 8(b). The current members of the Board were appointed by the Governor under this statutory scheme.

As a result of the injunction, under the principles referenced above, the Board's structure and composition initially reverts back to the law in effect before Session Law 2018-2 became law, which was Session Law 2017-6, § 4.(c). However, the Order also enjoins Session Law 2017-6, § 4.(c). As a result, the Board's structure and composition reverts back further to the law in effect before Session Law 2017-6 became law.

Before the enactment of Session Law 2017-6, the laws governing the structure and composition of the Board were enacted as section 2.(c) of Session Law 2016-125. However, this section of Session Law 2016-125 was expressly repealed by section 2 of Session Law 2017-6. Because the Order does not enjoin section 2 of Session Law 2017-6, section 2.(c) of Session Law 2016-125 remains repealed. *See Russell v. Ayer*, 120 N.C. 180, 189, 27 S.E. 133, 135 (1897) (holding that portions of statutes that are not held to be unconstitutional and are unrepealed remain in full force and effect). In addition, section 2.(c) of Session Law 2016-125 was enjoined by a three-judge panel of the Superior Court of Wake County, a ruling that was not overturned on appeal. *See Cooper v. Berger*, No. 16-CVS-15636, 2017 WL 1433245 at \*8 ¶ 23, \*14 ¶¶ 1, 4a (N.C. Super. Ct. Mar. 17, 2017). Accordingly, the Order requires that the Board's structure and composition revert even further back to the law in effect before Session Law 2016-125 was enacted.

Before the enactment of Session Law 2016-125, the laws governing the structure and composition of the Board were codified under N.C. GEN. STAT. § 163-19, last amended in 2013. Under the 2013 version of section 163-19, the State Board of Elections consisted of five individuals who were appointed by the Governor, from two lists of five individuals nominated by the State party chairs of the two political parties having the highest number of registered affiliates, so long as the Governor did not appoint more than three individuals registered with the same political party. Each Board member was to serve four-year terms, with no member serving more than two consecutive four-year terms. *Id.* The Board was also distinct from the State Ethics Commission and was not empowered with the duties to enforce North Carolina's ethics laws.



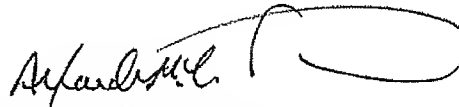
William C. McKinney  
General Counsel  
Office of the Governor of North Carolina  
November 28, 2018  
Page 3

**Conclusion**

For the reasons stated above, it is my opinion that, after the stay of the Order expires, and until the enactment of revised legislation, N.C. GEN. STAT. § 163-19, as codified before the enactment of Session Law 2016-125, will again govern the composition of the Board and the appointment of its members. As a result, the Board must be composed of five members, appointed by the Governor as described above, and will no longer be charged with enforcing North Carolina's ethics laws.

I hope that this adequately responds to your inquiry. This letter is the opinion of the undersigned and is not an official opinion of the Attorney General, as it has not been reviewed and approved in accordance with the procedures for issuing Attorney General opinions. If you should have any further questions about this matter, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alexander McC. Peters", with a large, stylized loop at the end.

Alexander McC. Peters  
Chief Deputy Attorney General

AMP/hs

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2018-146  
HOUSE BILL 1029

AN ACT TO REQUIRE A PRIMARY IF A NEW ELECTION IS ORDERED IN ANY ELECTION CONTEST; TO RETURN THE ADMINISTRATIVE STRUCTURE OF ELECTIONS, ETHICS, AND LOBBYING TO THE 2016 STRUCTURE; AND TO MAKE OTHER CHANGES TO THE ELECTIONS, ETHICS, AND LOBBYING LAWS.

The General Assembly of North Carolina enacts:

**PART I. REQUIRE PRIMARY FOR NEW ELECTION**

**SECTION 1.** G.S. 163-182.13 is amended by adding a new subsection to read:

"(g) Primary Required for a New Election. -- For any new congressional general election ordered under subsection (a) of this section, a primary for that election shall be conducted. The State Board shall determine when the primary shall be held, and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the primary."

**PART II. DELAY EFFECTIVE DATE PART I OF SB 824, 2017 REGULAR SESSION**

**SECTION 2.** If Senate Bill 824, 2017 Regular Session, becomes law, then Part I of that act shall not apply to any new election ordered under G.S. 163A-1181 in a 2018 election contest.

**PART III. ELECTIONS, ETHICS, AND LOBBYING**

**SECTION 3.1.(a)** The Revisor of Statutes is authorized to re-recodify Chapter 163A of the General Statutes back into Chapters 163, 138A, and 120C of the General Statutes. In preparing the re-recodified chapters, the Revisor of Statutes shall revert the changes made by the Revisor pursuant to Section 3 of S.L. 2017-6, except that after consultation with the appropriate agency staff, the Revisor may separate subsections of statutory sections that existed in the former Chapters into new sections and, when necessary to organize relevant law into its proper place in the re-recodified chapters, may rearrange sentences that appeared within those subsections. The Revisor shall also incorporate into the re-recodified chapters all amendments to Chapters 163, 163A, 138A, and 120C that became effective on or after April 25, 2017, other than those made by S.L. 2017-6 or by Part VIII of S.L. 2018-2.

**SECTION 3.1.(b)** Sections 3 through 21 of S.L. 2017-6 are repealed.

**SECTION 3.1.(c)** Part VIII of S.L. 2018-2 is repealed.

**SECTION 3.1.(d)** G.S. 163A-2 is repealed.

**SECTION 3.2.(a)** G.S. 163-19, as re-recodified by this act, is rewritten to read:

**"§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.**

(a) There is established the State Board of Elections, which may be referred to as the "State Board" in this Chapter.

(b) The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 2019, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of the State Board and likewise shall appoint their successors every four years at the expiration of each four-year term.



Not more than three members of the State Board shall be members of the same political party. The Governor shall appoint the members from a list of nominees submitted to the Governor by the State party chair of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board. Each party chair shall submit a list of four nominees who are affiliated with that political party. No person may serve more than two consecutive four-year terms.

(c) Any vacancy occurring in the State Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of three nominees submitted to the Governor by the State party chair of the political party that nominated the vacating member as provided in subsection (b) of this section. The three nominees must be affiliated with that political party.

(d) At the first meeting held after new appointments are made, the members of the State Board shall take the following oath:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me God."

(e) After taking the prescribed oath, the State Board shall organize by electing one of its members chair and another secretary.

(f) No person shall be eligible to serve as a member of the State Board who:

- (1) Holds any elective or appointive office under the government of the United States, the State of North Carolina, or any political subdivision thereof.
- (2) Is a candidate for nomination or election to any office.
- (3) Holds any office in a political party or organization.
- (4) Is a campaign manager or treasurer of any candidate in a primary or election.
- (5) Is currently an employee of the State, a community college, or a local school administrative unit.
- (6) Within the 48 months prior to appointment, has held any of the following positions with an organization that has engaged in electioneering in those 48 months:
  - a. Director, officer, or governing board member.
  - b. Employee.
  - c. Lobbyist registered under Chapter 120C of the General Statutes.
  - d. Independent contractor.
  - e. Legal counsel of record.

(g) No person while serving on the State Board shall:

- (1) Make a reportable contribution to a candidate for a public office over which the State Board would have jurisdiction or authority.
- (2) Register as a lobbyist under Chapter 120C of the General Statutes.
- (3) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
- (4) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum or ballot issue proposals.
- (5) Solicit contributions for a candidate, political committee, or referendum committee.
- (6) Serve as a member of any other State board, as defined in G.S. 138A-3."

**SECTION 3.2.(b)** G.S. 163-21, as re-recodified by this act, is rewritten to read:

**"§ 163-21. Compensation of Board members.**

Members of the State Board shall receive per diem, subsistence, and travel, as provided in G.S. 138-5 and G.S. 138-6."

**SECTION 3.2.(c)** G.S. 163-23, as re-recodified by this act, is rewritten to read:

**"§ 163-23. Powers of chair in execution of Board duties.**

In the performance of the duties enumerated in this Chapter, the Chair of the State Board shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. Upon the written request or requests of two or more members of the State Board, the Chair shall issue subpoenas for designated witnesses or identified papers, books, records, and other evidence. In the absence of the Chair or upon the Chair's refusal to act, any two members of the State Board may issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. In the absence of the Chair or upon the Chair's refusal to act, any member of the State Board may administer oaths."

**SECTION 3.2.(d)** G.S. 163-26, as re-recodified by this act, is rewritten to read:

**"§ 163-26. Executive Director of State Board of Elections.**

There is hereby created the position of Executive Director of the State Board, who shall perform all duties imposed by statute and such duties as may be assigned by the State Board."

**SECTION 3.2.(e)** G.S. 163-27, as re-recodified by this act, is rewritten to read:

**"§ 163-27. Executive Director to be appointed by State Board.**

(a) The State Board shall appoint an Executive Director for a term of two years with compensation to be determined by the Office of State Human Resources.

(b) The Executive Director shall serve beginning May 15 after the first meeting held after new appointments to the State Board are made, unless removed for cause, until a successor is appointed.

(c) The Executive Director shall be responsible for staffing, administration, and execution of the State Board's decisions and orders and shall perform such other responsibilities as may be assigned by the State Board.

(d) The Executive Director shall be the chief State elections official."

**SECTION 3.2.(f)** G.S. 163-28, as re-recodified by this act, reads as rewritten:

**"§ 163-28. State Board of Elections independent agency.**

The State Board of Elections shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed within any principal administrative department. The State Board shall exercise its statutory powers, duties, functions, and authority and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10."

**SECTION 3.3.(a)** G.S. 138A-6, as re-recodified by this act, is rewritten to read:

**"§ 138A-6. State Ethics Commission established.**

There is established the State Ethics Commission."

**SECTION 3.3.(b)** G.S. 138A-7, as re-recodified by this act, is rewritten to read:

**"§ 138A-7. Membership.**

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom shall be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom shall be of the same political party. Members shall serve for four-year terms, beginning January 1, 2019, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

- (2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.
- (3) Two members appointed by the Governor shall serve initial terms of three years.
- (4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance. Members appointed by the Governor may be removed by the Governor. Members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be removed by the Governor upon the recommendation of the Speaker. Members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be removed by the Governor upon the recommendation of the President Pro Tempore of the Senate.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

- (1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
- (2) Hold office in any political party above the precinct level.
- (3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.
- (4) Otherwise be an employee of the State, a community college, or a local school administrative unit, or serve as a member of any other State board.

(e) No individual is eligible to serve on the Commission who, within the 48 months prior to appointment, has held any of the following positions with an organization that has engaged in electioneering in those 48 months:

- (1) Director, officer, or governing board member.
- (2) Employee.
- (3) Lobbyist registered under Chapter 120C of the General Statutes.
- (4) Independent contractor.
- (5) Legal counsel of record.

(f) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(g) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or G.S. 138-7, as applicable.

(h) No individual may serve more than two consecutive four-year terms."

**SECTION 3.3.(c)** G.S. 138A-8, as re-recodified by this act, is rewritten to read:

**"§ 138A-8. Meetings and quorum.**

The Commission shall meet at least quarterly and at other times as called by its chair or by four of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Five members of the Commission constitute a quorum."

**SECTION 3.3.(d)** G.S. 138A-9, as re-recodified by this act, is rewritten to read:

**"§ 138A-9. Staff and offices.**

(a) The Commission may employ professional and clerical staff, including an executive director.

(b) The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting. The Department shall provide administrative support to the Commission free of charge."

**SECTION 3.3.(e)** G.S. 138A-12(r), as re-recodified by this act, is rewritten to read:

"(r) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person or governmental unit covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4."

**SECTION 3.4.(a)** The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the ethics compliance and enforcement functions of the Bipartisan State Board of Elections and Ethics Enforcement are transferred as a Type II transfer to the State Ethics Commission as re-recodified in this act. Specifically, the following positions shall be transferred: Administrative Assistant III (Position 60088563), Attorney Supervisor I (Position 60088564), Office Assistant V (Position 60088565), Administrative Assistant II (Position 60088566), Attorney II (Position 60088567), Administrative Assistant II (Position 60088568), Attorney II (Position 60088570), Disclosure Manager (Position 65012029), Compliance Analyst I (Position 65012032), and Compliance Analyst I (Position 65019901).

**SECTION 3.4.(b)** The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the lobbying registration and lobbying enforcement functions of the Bipartisan State Board of Elections and Ethics Enforcement are transferred as a Type I transfer to the Secretary of State as re-recodified in this act. Specifically, the following positions shall be transferred: Administrative Assistant II (Position 60088203), Administrative Assistant II (Position 60088204), Administrative Assistant II (Position 60088218), Attorney II (Position 60008800), and Administrative Specialist II (Position 60008803).

**SECTION 3.4.(c)** The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the elections and campaign finance functions of the Bipartisan State Board of Elections and Ethics Enforcement are transferred as a Type II transfer to the State Board of Elections as re-recodified in this act. Specifically, the following positions shall be transferred: Executive Director (Position 60088197), Elections Investigator (Position 60088201), Senior Elections Specialist (Position 60088207), Director of Election Operations (Position 60088209), Associate General Counsel, Elections (Position 60088211), Elections Support Technician (Position 60088212), Auditor (Position 60088199), Deputy Director/Chief Operating Officer (Position 60088200), Compliance and Disclosure Manager (Position 60088205), Elections Specialist (Position 60088206), Office Assistant III (Position 60088215), Business And Technology Applic Tech (Position 60088232), Auditor (Position 60088252), Auditor (Position 60088254), Elections Specialist III (Position 60088256), Elections Specialist III (Position 60088257), Chief Investigator (Position 60088259), Accounting and HR Specialist (Position 65005659), Auditor (Position 65005661), HR Director (Position 65005663), Senior

Elections Investigator (Position 65022162), Elections Investigator (Position 65022163), Elections Investigator (Position 65022164), Agency General Counsel (Position 60088198), Software Tester (Position 60088202), Elections Specialist I (Position 60088208), Disclosure Specialist (Position 60088213), Software Tester (Position 60088216), Auditor (Position 60088217), Information Technology Director (Position 60088219), Database Administrator (Position 60088220), Senior Business System Analyst (Position 60088221), Business And Technology Applic Tech (Position 60088222), Business And Technology Applic Tech (Position 60088223), Business And Technology Applic Tech (Position 60088224), Operations Analyst (Position 60088227), Senior Elections Specialist (Position 60088228), Elections Systems Specialist (Position 60088229), Business And Technology Applic Analyst (Position 60088233), Database Administrator (Position 60088234), Business And Technology Applic Analyst (Position 60088235), Systems Program Analyst (Position 60088237), Elections Systems Specialist (Position 60088239), Elections Systems Specialist (Position 60088240), Information Technology Manager (Position 60088241), Information Technology Manager (Position 60088242), GIS Specialist (Position 65005664), Elections Systems Specialist (Position 65005665), Software Lead Developer (Position 65021730), Systems/Programmer Analyst (Position 65021731), Public Information Officer (Position 65020532), Chief Learning Officer (Position 65020533), Elections Specialist I (Position 65020534), Elections Specialist I (Position 65020535), Elections Specialist I (Position 65020536), Deputy General Counsel (Position 65021570), Chief Data Officer (Position 65021571), Administrative Specialist II (Position 60008801), Administrative Specialist II (Position 60008802), Executive Assistant (Position 60008806), Attorney II (Position 60088571), Attorney II (Position 65005579), Compliance Analyst I (Position 65012030), Voting Systems Manager (Position 65019619), Advanced Data Analyst (Position 65027807), Advanced Data Analyst (Position 65027808), and Chief Information Security Officer (Position 65027809).

**SECTION 3.4.(d)** The Director of the Budget shall resolve any disputes arising out of the transfers provided for in this section.

**SECTION 3.5.(a)** Any previous assignment of duties of a quasi-legislative or quasi-judicial nature by the Governor or General Assembly to the agencies or functions transferred by this act shall have continued validity with the transfer under this act. Except as otherwise specifically provided in this act, each enumerated commission, board, or other function of State government transferred from the Bipartisan State Board of Elections and Ethics Enforcement, as created in S.L. 2017-6 and S.L. 2018-2, is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the Bipartisan State Board of Elections and Ethics Enforcement is referred to by law, contract, or other document in lieu of the former entities, as re-recodified in this act, the former entity, as re-recodified by this act, is charged with exercising the functions of the former named entity.

**SECTION 3.5.(b)** No action or proceeding pending on January 31, 2019, brought by or against the Bipartisan State Board of Elections and Ethics Enforcement shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Secretary of State regarding the lobbyist registration and lobbying enforcement of the Secretary of State, the State Board of Elections, or the State Ethics Commission, as re-recodified in this act. In these actions and proceedings, the former entity, as re-recodified by this act, as appropriate, shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the former entity, as re-recodified by this act, pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on January 31, 2019, may be conducted and completed by the former entity, as re-recodified by this act, in the same manner and under the same terms and conditions and with

the same effect as if conducted and completed by the Bipartisan State Board of Elections and Ethics Enforcement.

**SECTION 3.5.(c)** The reorganization provided for under this act shall not affect any ongoing investigation or audit. Any ongoing hearing or other proceeding before the Bipartisan State Board of Elections and Ethics Enforcement on January 31, 2019, shall be transferred to the former entity, as re-recodified by this act, on January 31, 2019. Prosecutions for offenses or violations committed before January 31, 2019, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

**SECTION 3.5.(d)** Rules adopted by the Bipartisan State Board of Elections and Ethics Enforcement shall remain in effect as provided in G.S. 150B-21.7. Policies, procedures, and guidance shall remain in effect until amended or repealed by the appropriate former entity, as re-recodified by this act. The list of covered boards adopted by the State Ethics Commission under G.S. 138A-11 as of December 31, 2016, as amended by the Bipartisan State Board of Elections and Ethics Enforcement, shall continue in effect until amended or repealed by the former entity, as re-recodified by this act.

**SECTION 3.5.(e)** Any evaluation of a statement of economic interest issued by the Bipartisan State Board of Elections and Ethics Enforcement pursuant to Article 6 of Chapter 163A of the General Statutes in 2017 or 2018 shall remain in effect until amended or repealed by the former entity, as re-recodified by this act.

**SECTION 3.6.** This Part becomes effective January 31, 2019.

#### **PART IV. CHANGES**

**SECTION 4.1.(a)** G.S. 120C-100(a)(13) is repealed.

**SECTION 4.1.(b)** G.S. 120C-215 is repealed.

**SECTION 4.1.(c)** G.S. 120C-401(f) and (h), as re-recodified by this act, reads as rewritten:

"(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the ~~lobbyist, lobbyist principal, or solicitor~~ lobbyist or lobbyist principal. No ~~lobbyist, lobbyist principal, or solicitor~~ lobbyist or lobbyist principal may register or reregister until full compliance with this section has occurred.

...

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a ~~lobbyist, lobbyist principal, or solicitor~~ lobbyist or lobbyist principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section."

**SECTION 4.1.(d)** G.S. 120C-402(b)(2) is repealed.

**SECTION 4.1.(e)** G.S. 120C-403(b)(2) is repealed.

**SECTION 4.1.(f)** G.S. 120C-404 is repealed.

**SECTION 4.2.(a)** G.S. 138A-12(b), as re-recodified by this act, reads as rewritten:

"(b) Institution of Proceedings. – On its own motion, in response to a signed and ~~sworn~~ sworn, under oath or affirmation, complaint of any ~~individual registered voter~~ filed with the State Board, or upon the written request of any public servant or those responsible for the hiring, appointing, or supervising of a public servant, the State Board shall conduct an inquiry into any of the following:

- (1) The application or alleged violation of this Subchapter.
- (2) For legislators, the application or alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.



- (3) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.

- (4) An alleged violation of G.S. 126-14.

Upon receipt of a referral under G.S. 147-64.6B or a report under G.S. 147-64.6(c)(19), the State Board may conduct an inquiry under this section on its own motion. Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation."

**SECTION 4.2.(b)** G.S. 163-278.22(7), as re-recodified by this act, reads as rewritten:

- "(7) To make investigations to the extent the State Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 26 of ~~[of this Chapter]~~ this Chapter of the General Statutes and, upon ~~complaint-complaint~~, signed and sworn under oath or affirmation, by any registered voter, with respect to alleged violations of any part of this Article or Article 26 ~~[this Chapter of]~~ of this Chapter of the General Statutes. All investigations shall be confidential, and no investigation shall be initiated more than four years from the earliest of the following dates:

- a. The facts constituting the violation are known to the State Board or county board with jurisdiction.
- b. The facts constituting the violation can be determined from the public record.
- c. The complainant knew or should have known of the conduct upon which the complaint is based."

**SECTION 4.2.(c)** G.S. 120-103.1(a) reads as rewritten:

"(a) Institution of Proceedings. – On its own motion, upon receipt by the Committee of a signed and ~~sworn-sworn~~, under oath or affirmation, allegation of unethical conduct by a ~~legislator, legislator from a registered voter~~ or upon receipt of a referral of a complaint from the Bipartisan State Board of Elections and Ethics Enforcement under Articles 5, 6, 7, and 9 of Chapter 163A of the General Statutes, the Committee shall conduct an investigation into any of the following:

- (1) The application or alleged violation of Articles 5, 6, 7, and 9 of Chapter 163A of the General Statutes and of this Article.
- (2) Repealed by Session Laws 2007-348, s. 2, effective August 9, 2007.
- (3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process."

**SECTION 4.3.(a)** G.S. 163-30, as re-recodified by this act, reads as rewritten:

**"§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.**

(a) In every county of the State there shall be a county board of elections, to consist of ~~three-five~~ persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in ~~June-1985, June~~, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Four members of county boards of elections shall be appointed by the State Board on the last Tuesday in June and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. One member of the county boards of elections shall be appointed by the Governor to be the chair of the county board on the last Tuesday in June and every two years thereafter, and that member's term of office shall continue for two years from the specified date of appointment and until a successor is appointed and qualified. NotOf the

appointments by the State Board, not more than two members of the county board of elections shall belong to the same political party.

(b) No person shall be eligible to serve as a member of a county board of elections who meets any of the following criteria:

- (1) holds~~Holds~~ any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.
- (2) No person who holds~~Holds~~ any office in a state, congressional district, county or precinct political party or ~~organization, organization.~~ Provided, however, that the position of delegate to a political party convention shall not be considered an office for the purpose of this subdivision.
- (3) ~~or who is~~~~Is~~ a campaign manager or treasurer of any candidate or political party in a primary or ~~election, election.~~ shall be eligible to serve as a member of a county board of elections, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this section.
- (4) No person shall be eligible to serve as a member of a county board of elections who is~~Is~~ a candidate for nomination or election.
- (5) No person shall be eligible to serve as a member of a county board of elections who is~~Is~~ the wife, husband, son, son in law, daughter, daughter in law, mother, mother in law, father, father in law, sister, sister in law, brother, brother in law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the board of elections becoming ineligible, that member's seat shall be declared vacant. This paragraph-subdivision only applies if the county board of elections is conducting the election for which the relative is a candidate.

(c) The State ~~chairman-chair~~ of each political party shall have the right to recommend to the State Board of Elections ~~three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the State Board 15 or more days before the last Tuesday in June 1985, June 2019, and each two years thereafter, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.~~

(d) Whenever a vacancy occurs in the membership of a county board of elections for any cause the State ~~chairman-chair~~ of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections ~~to fill the vacancy from the names thus recommended.~~

(e) At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the \_\_\_\_\_ County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

(f) Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the ~~chairman-chair~~ of the board, and shall be paid the sum of twenty five dollars (\$25.00) per day for attending each of those meetings."

**SECTION 4.3.(b)** G.S. 163-31, as re-recodified by this act, reads as rewritten:

**"§ 163-31. Meetings of county boards of elections; quorum; minutes.**

(a) In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in July in the year of their appointment ~~by the State Board of Elections and~~, after taking the oath of office provided in G.S. 163-30, they shall organize by electing one member ~~chairman and another member~~ secretary of the county board of elections.

(b) On the Tuesday following the third Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct chief judges and judges of elections.

(c) The board may hold other meetings at such times as the ~~chairman~~ chair of the board, or any ~~two~~ three members thereof, may direct, for the performance of duties prescribed by law.

(d) A majority of the members shall constitute a quorum for the transaction of board business. The ~~chairman~~ chair shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

(e) The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the director of elections to record and maintain the minutes under ~~his~~ the secretary's supervision."

**SECTION 4.4.(a)** G.S. 163-278.34(f), as re-recodified by this act, reads as rewritten:

"(f) ~~Notifying and Consulting With District Attorney.~~ OAH Review. – Before After assessing a civil penalty under subsection (b) of this section or imposing a civil remedy under subsection (c) of this section, appeal of the decision of the State Board under this section shall ~~notify and consult with the district attorney who would be responsible under G.S. 163A-1445 for bringing a criminal prosecution concerning the violation.~~ be in accordance with Article 3 of Chapter 150B of the General Statutes."

**SECTION 4.4.(b)** G.S. 150B-38(a)(6) is repealed.

**SECTION 4.5.(a)** G.S. 150B-1(c) and (d) read as rewritten:

"(c) Full Exemptions. – This Chapter applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
- (2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- (4) Repealed by Session Laws 2011-287, s. 21(a), effective June 24, 2011, and applicable to rules adopted on or after that date.
- (5) Repealed by Session Laws 2011-401, s. 1.10(a), effective November 1, 2011.
- (6) ~~The Bipartisan State Board of Elections and Ethics Enforcement in administering the HAVA Administrative Complaint Procedure of Part 4 of Article 17 of Chapter 163A of the General Statutes.~~
- (7) The North Carolina State Lottery.
- (8) [Expired June 30, 2012.]

(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

- ...
- (16) ~~The Bipartisan State Board of Elections and Ethics Enforcement with respect to Subchapter II of Chapter 163A of the General Statutes.~~

...."

**SECTION 4.5.(b)** G.S. 150B-2(8a) reads as rewritten:

"(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that

describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
- b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by ~~G.S. 93B-1, or by the Bipartisan State Board of Elections and Ethics Enforcement~~ G.S. 93B-1.
- c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
  1. Declaratory rulings under G.S. 150B-4.
  2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the Department of Information Technology applied to information technology as defined by G.S. 147-33.81."

**SECTION 4.5.(c) G.S 163-82.12, as recodified by this act, reads as rewritten:**

**"§ 163-82.12. Promulgation of guidelines relating to computerized voter registration.**

The State Board of Elections shall make all guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These guidelines shall include provisions for all of the following:

- (1) Establishing, developing, and maintaining a computerized central voter registration file.
- (2) Linking the central file through a network with computerized voter registration files in each of the counties.
- (3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration applications.
- (4) Protecting and securing the data.
- (5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.
- (6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.
- (7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.
- (8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.
- (8b) Notifying voter-registration applicants whose drivers license or last four digits of social security number does not result in a validation, attempting to resolve the discrepancy, initiating investigations under G.S. 163-33(3) or challenges under Article 8 of this Chapter where warranted, and notifying any voters of the requirement under G.S. 163-166.12(b2) to present identification when voting.
- (9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.
- (10) Enabling the State Board of Elections to assist the Division of Motor Vehicles in providing to the jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records.

~~These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of these guidelines shall be made available to the public upon request or otherwise by the State Board."~~

**SECTION 4.5.(d)** G.S 163-91, as recodified by this act, reads as rewritten:

**"§ 163-91. Complaint procedure."**

(a) The State Board of Elections shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 for the resolution of complaints alleging violations of Title III of that Act.

~~(b) With respect to the adoption of the complaint procedure under this section, the State Board of Elections is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint procedure under this section, the State Board of Elections shall complete all of the following:~~

- ~~(1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.~~
- ~~(2) Accept oral and written comments on the proposed complaint procedure.~~
- ~~(3) Hold at least one public hearing on the proposed complaint procedure.~~

~~(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes."~~

**SECTION 4.5.(e)** G.S 163-132.5B, as recodified by this act, is repealed.

**SECTION 4.5.(f)** G.S 163-165.7(d), as recodified by this act, reads as rewritten:

"(d) **(Effective until January 1, 2018 or September 1, 2019 – see note)** Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including all of the following:

- (1) Procedures for county boards of elections to utilize when recommending the purchase of a certified voting system for use in that county.
- (2) Form of official ballot labels to be used on voting systems.
- (3) Operation and manner of voting on voting systems.
- (4) Instruction of precinct officials in the use of voting systems.
- (5) Instruction of voters in the use of voting systems.
- (6) Assistance to voters using voting systems.
- (7) Duties of custodians of voting systems.
- (8) Examination and testing of voting systems in a public forum in the county before and after use in an election.
- (9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:
  - a. State Board of Elections.
  - b. Department of Information Technology.
  - c. The State chairs of each political party recognized under G.S. 163-96.
  - d. The purchasing county.

Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132-2.

- (10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper record. Those procedures shall at a minimum include procedures to protect against the alteration of the paper record after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.

- (11) Compliance with section 301 of the Help America Vote Act of 2002.

~~Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.~~

(d) **(Effective January 1, 2018 or September 1, 2019 – see note)** Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including all of the following:

- (1) Procedures for county boards of elections to utilize when recommending the purchase of a certified voting system for use in that county.
- (2) Form of official ballot labels to be used on voting systems.
- (3) Operation and manner of voting on voting systems.
- (4) Instruction of precinct officials in the use of voting systems.
- (5) Instruction of voters in the use of voting systems.
- (6) Assistance to voters using voting systems.
- (7) Duties of custodians of voting systems.

- (8) Examination and testing of voting systems in a public forum in the county before and after use in an election.
- (9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:
  - a. State Board of Elections.
  - b. Department of Information Technology.
  - c. The State chairs of each political party recognized under G.S. 163-96.
  - d. The purchasing county

Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132-2.

- (10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper ballot. Those procedures shall at a minimum include procedures to protect against the alteration of the paper ballot after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any individually voted paper ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper ballot.

- (11) Compliance with section 301 of the Help America Vote Act of 2002.

~~Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1."~~

**SECTION 4.5.(g)** G.S. 163-258.30(a), as re-recodified by this act, reads as rewritten:

"(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-258.28 and G.S. 163-258.29 and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of Article 2A of Chapter 150B of the General Statutes records."

**SECTION 4.5.(h)** G.S. 120C-101(c), as re-recodified by this act, is repealed.

**SECTION 4.6.** G.S. 163-278.6(8j), as re-recodified by this act, reads as rewritten:

"(8j) The term "electioneering communication" means any broadcast, cable, or satellite communication, or mass mailing, or telephone bank that has all the following characteristics:

- a. Refers to a clearly identified candidate for elected office.
- b. In the case of the general election in November of the even-numbered year is aired or transmitted after September 7 of that year, and in the case of any other election is aired or transmitted within 60-30 days of the time set for absentee voting to begin pursuant to G.S. 163A-1300, 163A-1301, 163A-1302, 163A-1303, and 163A-1304 in an election for that office.
- c. May be received by either:
  - 1. 50,000 or more individuals in the State in an election for statewide office or 7,500 or more individuals in any other election if in the form of broadcast, cable, or satellite communication.



2. 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election if in the form of mass mailing or telephone bank."

SECTION 4.7. G.S. 120-2.4 reads as rewritten:

**"§ 120-2.4. Opportunity for General Assembly to remedy defects.**

(a) If the General Assembly enacts a plan apportioning or redistricting State legislative or congressional districts, in no event may a court impose its own substitute plan unless the court first gives the General Assembly a period of time to remedy any defects identified by the court in its findings of fact and conclusions of law. That period of time shall not be less than two ~~weeks-weeks~~, provided, however, that if the General Assembly is scheduled to convene legislative session within 45 days of the date of the court order that period of time shall not be less than two weeks from the convening of that legislative session.

(a1) In the event the General Assembly does not act to remedy any identified defects to its plan within that period of time, the court may impose an interim districting plan for use in the next general election only, but that interim districting plan may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court.

(b) Notwithstanding any other provision of law or authority of the Bipartisan State Board of Elections and Ethics Enforcement under Subchapter III of Chapter 163A of the General Statutes, the Bipartisan State Board of Elections and Ethics Enforcement shall have no authority to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under this section or a plan enacted by the General Assembly."

SECTION 4.8. G.S. 163-231(a), as re-recodified by this act, reads as rewritten:

"(a) Procedure for Voting Absentee Ballots. — In the presence of two persons who are at least 18 years of age, and who are not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-237(b1), the voter shall do all of the following:

- (1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's instruction.
- (2) Fold each ballot separately, or cause each of them to be folded in the voter's presence.
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence.
- (4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).
- (5) Require those two persons in whose presence the voter marked that voter's ballots to sign the application and certificate as witnesses and to indicate those persons' addresses. Failure to list a ZIP code does not invalidate the application and certificate.
- (6) Do one of the following:
  - a. Have the application notarized. The notary public may be the person in whose presence the voter marked that voter's ballot.
  - b. Have the two persons in whose presence the voter marked that voter's ballots to certify that the voter is the registered voter submitting the marked ballots.

Alternatively to the prior paragraph of this subsection, any requirement for two witnesses shall be satisfied if witnessed by one notary public, who shall comply with all the other requirements of that paragraph. The notary shall affix a valid notarial seal to the envelope, and include the word "Notary Public" below his or her signature.



The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests assistance and that person is otherwise authorized by law to give assistance. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots."

**SECTION 4.9.** G.S. 163-228, as re-recodified by this act, reads as rewritten:

**"§ 163-228. Register of absentee requests, applications, and ballots issued; a public record.**

(a) The State Board of Elections shall approve an official register in which the county board of elections in each county of the State shall record the following information:

- (1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
- (2) Number of assigned voter's application when issued.
- (3) Precinct in which applicant is registered.
- (4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163-227.2, a notation of that fact.
- (5) Repealed by Session Laws 2009-537, s. 3, effective January 1, 2010, and applicable with respect to elections held on or after that date.
- (6) Date request for application for ballots is received by the county board of elections.
- (7) The voter's party affiliation.
- (8) The date the ballots were mailed or delivered to the voter.
- (9) Whatever additional information and official action may be required by this Article.

(b) The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

(c) The register of absentee requests, applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection.

(d) The State Board shall require the information in the official register provided for in this section and the list required by G.S. 163-232 to be transmitted to the State Board. The State Board shall adopt rules to implement this subsection, including frequency of transmittal."

**SECTION 4.10.(a)** G.S. 1-267.1 reads as rewritten:

**"§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting State legislative or congressional districts; claims challenging the facial validity of an act of the General Assembly.**

...  
(b) Whenever any person files in the Superior Court of Wake County any action challenging the validity of any act of the General Assembly that apportions or redistricts State legislative or congressional districts, a copy of the complaint shall be served upon the senior resident superior court judge of Wake County, who shall be the presiding judge of the three-judge panel required by subsection (a) of this section. Upon receipt of that complaint, the senior resident superior court judge of Wake County shall notify the Chief Justice, who shall appoint two additional resident superior court judges to the three-judge panel of the Superior Court of Wake County to hear and determine the action. Before making those appointments, the Chief Justice shall consult with the North Carolina Conference of Superior Court Judges, which shall provide the Chief Justice with a list of recommended appointments. To ensure that members of the three-judge panel are drawn from different regions of the State, the Chief Justice shall appoint to

the three-judge panel one resident superior court judge from the First through ~~Fourth~~ Third Judicial Divisions and one resident superior court judge from the ~~Fifth~~ Fourth through ~~Eighth~~ Fifth Judicial Divisions. In order to ensure fairness, to avoid the appearance of impropriety, and to avoid political bias, no member of the panel, including the senior resident superior court judge of Wake County, may be a former member of the General Assembly. Should the senior resident superior court judge of Wake County be disqualified or otherwise unable to serve on the three-judge panel, the Chief Justice shall appoint another resident superior court judge of Wake County as the presiding judge of the three-judge panel. Should any other member of the three-judge panel be disqualified or otherwise unable to serve on the three-judge panel, the Chief Justice shall appoint as a replacement another resident superior court judge from the same group of judicial divisions as the resident superior court judge being replaced.

...  
(b2) For each challenge to the validity of statutes and acts subject to subsection (a1) of this section, the Chief Justice of the Supreme Court shall appoint three resident superior court judges to a three-judge panel of the Superior Court of Wake County to hear the challenge. The Chief Justice shall appoint a presiding judge of each three-judge panel. To ensure that members of each three-judge panel are drawn from different regions of the State, the Chief Justice shall appoint to each three-judge panel one resident superior court judge from the ~~First, Second, or Fourth~~ First or Second Judicial Division, one resident superior court judge from the ~~Seventh or Eighth~~ Third or Fourth Judicial Division, and one resident superior court judge from the ~~Third, Fifth, or Sixth~~ Fifth Judicial Division. Should any member of a three-judge panel be disqualified or otherwise unable to serve on the three-judge panel or be removed from the panel at the discretion of the Chief Justice, the Chief Justice shall appoint as a replacement another resident superior court judge from the same group of judicial divisions as the resident superior court judge being replaced.

...."

**SECTION 4.10.(b)** This section becomes effective January 1, 2019.

**SECTION 4.11.(a)** G.S. 138A-10(a), as re-recodified by this act, reads as rewritten:

"§ 138A-10. Powers and duties.

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

...

(6a) Issue confidential recommendations to the State Board of Elections regarding the appropriateness of a criminal referral of campaign finance violations.

...."

**SECTION 4.11.(b)** Article 2 of Chapter 138A of the General Statutes, as re-recodified by this act, is amended by adding a new section to read:

"§ 138A-13.5. **Recommendations Regarding Criminal Referrals of Campaign Finance Violations.**

Upon request by the State Board of Elections, the Commission shall offer confidential recommendations regarding the appropriateness of a criminal referral for campaign finance violations. The Commission shall employ staff to conduct an investigation. The investigation and vote of the Commission on the recommendation shall be completed within 90 days of receipt of the request from the State Board of Elections."

**SECTION 4.11.(c)** G.S. 163-278.22, as re-recodified by this act, reads as rewritten:

"§ 163-278.22. **Duties of State Board.**

It shall be the duty and power of the State Board:

...

(7a) To request and receive confidential recommendations from the State Ethics Commission regarding the appropriateness of a criminal referral of campaign finance violations.

- (8) After investigation, investigation and receipt of the confidential recommendations regarding the appropriateness of a criminal referral for campaign finance violations, to report apparent violations by candidates, political committees, referendum committees, legal expense funds, individuals or persons to the proper district attorney as provided in G.S. 163-278.27.

...."

**SECTION 4.11.(d)** G.S. 163-278.27, as re-recodified by this act, reads as rewritten:  
**"§ 163-278.27. Criminal penalties; duty to report and prosecute.**

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations as stated in G.S. 15-1 shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(a2) A person or individual who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a) and the unlawful contributions total more than ten thousand dollars (\$10,000) per election is guilty of a Class I felony.

(a3) The Board shall refer apparent violations under this section to the State Ethics Commission. The State Ethics Commission shall investigate and make confidential recommendations to the Board regarding the appropriateness of a criminal referral for those alleged violations, as provided in G.S. 138A-13.5. The Board shall not take action under subsection (b) of this section for 90 days after the referral to the State Ethics Commission.

(b) Whenever Following receipt and consideration of the confidential recommendation from the State Ethics Commission as provided in subsection (a3) of this section, if the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, details and a copy of the recommendation issued by the State Ethics Commission, to the following prosecuting authorities:

- (1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;
- (2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;
- (3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and
- (4) In the case of a person or any group of individuals: report to the district attorney or district attorneys of the prosecutorial district or districts in which

any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge."

**SECTION 4.11.(e)** This section is effective January 31, 2019, and applies to referrals of violations made on or after that date by the State Board of Elections to prosecuting authorities pursuant to G.S. 163-278.27, as re-recodified by this act and amended by this section.

## **PART V. REPORT ON ABSENTEE BALLOT FRAUD INVESTIGATIONS**

**SECTION 5.** By April 1, 2019, the State Board of Elections shall report and make recommendations to the Joint Legislative Elections and Ethics Oversight Committee on absentee ballot fraud. The report shall address all of the following:

- (1) Efforts to identify and investigate instances of potential mail-in ballot harvesting.
- (2) Data and statistics on the number of requests for mail-in absentee ballots, the number of returned mail-in absentee ballots for the past five election cycles, and any trends or patterns that appear analyzing those data and statistics.
- (3) Any other related matter identified by the State Board impacting voting absentee ballot.

## **PART VI. EFFECTIVE DATE**

**SECTION 6.1.** Consistent with this act, when re-recodifying as directed under this act, the Revisor is authorized to change all references to the Bipartisan State Board of Elections and Ethics Enforcement to instead be references to the State Board of Elections, State Ethics Commission, or Secretary of State, as appropriate. The Revisor may modify statutory citations throughout the General Statutes, as appropriate, and may modify any references to statutory divisions, such as "Chapter," "Subchapter," "Article," "Part," "section," and "subsection"; adjust the order of lists of multiple statutes to maintain statutory order; correct terms and conform names and titles changed by this act; eliminate duplicative references to the State Boards that result from the changes authorized by this section; and make conforming changes to catch lines and references to catch lines. The Revisor may also adjust subject and verb agreement and the placement of conjunctions. The Revisor shall consult with the Bipartisan State Board of Elections and Ethics Enforcement, the State Board of Elections, the State Ethics Commission, and the Secretary of State, as appropriate, on this recodification.

**SECTION 6.2.(a)** Notwithstanding G.S. 163-19, 163-30, and 138A-7, as re-recodified by this act, appointments to the State Board of Elections, county boards of elections, and State Ethics Commission shall be made as soon as possible upon enactment of this act, and no further appointments shall be required in 2019, other than to fill vacancies as may occur. The requirements of G.S. 163-19(f)(5) shall not apply to any member of the Bipartisan State Board of Elections and Ethics Enforcement serving on the effective date of this act who is appointed to the State Board of Elections in 2019. In making appointments to the State Board of Elections and State Ethics Commission, any service on the Bipartisan State Board of Elections and Ethics Enforcement shall be considered service for purposes of consecutive terms.

**SECTION 6.2.(b)** Notwithstanding G.S. 163-27, the term of office of the Executive Director of the State Board of Elections shall begin upon appointment, which shall be made as soon as possible after the State Board of Elections' initial meeting, and expire in May 2021.

SECTION 6.3. Except as otherwise provided, this act is effective when it becomes law.  
In the General Assembly read three times and ratified this the 12<sup>th</sup> day of December, 2018.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 3:38 p.m. this 27<sup>th</sup> day of December, 2018.

s/ Sarah Lang Holland  
Senate Principal Clerk

FOR IMMEDIATE RELEASE  
Tuesday, November 27, 2018

PATRICK GANNON, PIO  
email

*State Board certifies most elections, settles Hise campaign finance matter.*

**RALEIGH, N.C.** — The Bipartisan State Board of Elections & Ethics Enforcement on Tuesday unanimously certified the results of most 2018 general election contests in North Carolina and settled a campaign finance issue with the committee of state Sen. Ralph Hise.

**State Canvass**

The State Board did not certify the results of the 9<sup>th</sup> Congressional District race. In his motion, Board Vice Chairman Joshua Malcolm cited the Board's authority under G.S. 163A-1180 as the reason for delaying certification of that contest.

That statute gives the Board the authority to **"take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election."**

The Board also did not certify the results of the following contests because of protests or recounts: N.C. House District 103 (Mecklenburg); N.C. District Court 26A Seat 2 (Mecklenburg); N.C. District Court 16B Seat 2 (Robeson); County Commissioner Districts 2 and 4 (Lee); Board of Education District 2 (Pitt); Board of Education District 6 (Wayne); Sheriff (Columbus); Tabor City Mixed Beverage (Columbus); Clerk of Superior Court (Rockingham); Sheriff (Montgomery).

**Hise settlement**

Also, the Board unanimously entered a settlement under which the Ralph Hise for NC Senate committee agreed to **"disgorge funds in the amount of \$500, and reimburse the State Board in the amount of \$4,000 for expenses incurred in the course of its investigation"** into campaign finance-related issues with that committee.

The State Board investigation began after Greg Flynn of Wake County filed a complaint regarding campaign finance disclosure filings that were later amended by the committee. State Board Chairman Andy Penry thanked Flynn for bringing the issues to the State Board's attention, adding that the Board relies on the work of volunteers and watchdogs to help hold public officials accountable.

All meeting documents -- including the settlement agreement, the canvass materials and audio of the meeting -- are here.

##





# NORTH CAROLINA

## State Board of Elections & Ethics Enforcement

### REVISED

### NOTICE OF HEARING & STATE CANVASS

The Bipartisan State Board of Elections & Ethics Enforcement will hold a hearing and conduct State canvass at a meeting beginning at **10:00 a.m. on Tuesday, November 27, 2018**. The meeting will occur in the Agency's board room located on the Third Floor of the Dobbs Building, 430 N. Salisbury Street in Raleigh. Public materials will post online: <https://bit.ly/2Th29YT>.

### TENTATIVE AGENDA

Statement regarding ethics and conflicts of interest  
G.S. § [163A-159\(e\)](#)

County boards of elections vacancy appointments  
G.S. § [163A-766\(d\)](#)

#### Hearings

*In re Ralph Hise for NC Senate*

Canvass\*  
G.S. § [163A-1172\(c\)](#)

Consideration of fines for late or incomplete Statements of  
Economic Interest  
G.S. § [163A-190](#)

Designation of Covered Boards and Commissions  
G.S. § [163A-152\(3\)](#), [30 NCAC 02 .0101](#), *et seq.*

Closed Session  
G.S. § [143-318.11\(a\)\(7\)](#), [30 NCAC 10D. 0403\(b\)](#)

#### Adjournment

\*Statewide canvass will not occur prior to 11 a.m., consistent with G.S. § [163A-1172\(c\)](#).





# **NORTH CAROLINA**

## **State Board of Elections & Ethics Enforcement**

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### **SECOND REVISED**

### **NOTICE OF HEARING & STATE CANVASS**

The Bipartisan State Board of Elections & Ethics Enforcement will reconvene its meeting of Tuesday, November 27 by teleconference at 10:00 a.m. on Friday, November 30 at the below dial-in:

Line: 415-655-0052  
Code: 767-369-311

Any public materials will post online: <https://bit.ly/2Th29YT>.

### **TENTATIVE AGENDA**

Canvass of N.C. House 103, District Court 26A (Seat 2), District Court 16B (Seat 2), and authentication of the count for Lee County Commissioner (Seats 2 & 4), Pitt County Board of Education (Seat 2), and Wayne County Board of Education (Seat 2).  
G.S. § 163A-1172(c)

Closed Session  
G.S. § 143-318.11(a)(7)

Adjournment



FILED

STATE OF NORTH CAROLINA  
2017 DEC 14 PM 1:23  
WAKE COUNTY  
WAKE CO., C.S.C.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17 CVS 15132

SAMUEL F. FURGIUELE, JR.,  
MARSHALL C. ASHCRAFT, and  
CONSTANCE J. ULMER

Petitioner,

v.

THE NORTH CAROLINA STATE  
BOARD OF ELECTIONS & ETHICS  
ENFORCEMENT,

Respondent.

ORDER ISSUING WRIT OF MANDAMUS

THIS CAUSE was heard by the undersigned Senior Resident Superior Court Judge at the 12 December 2017 Civil Session of Wake County Superior Court on the 8 December 2017 Petition for Writ of Mandamus submitted by Samuel F. Furguele, Jr., Marshall C. Ashcraft, and Constance J. Ulmer (collectively, the "Petitioners"). After reviewing the petition, the record, and all other filings submitted by Petitioners and by the North Carolina State Board of Elections & Ethics Enforcement ("Respondent" or "State Board"), and after considering the arguments of counsel for both parties, and noting the unique circumstances of this case, it appears to the Court that Petitioners are entitled to immediate entry of a Writ of Mandamus.

FINDINGS OF FACT

I. On December 8, 2017, Petitioners, three prevailing candidates for election to the Boone Town Council, filed a Petition for Writ of Mandamus and Motion for Expedited Hearing under N.C. Gen. Stat. §§ 163-22 and 163-182.14. Petitioners sought to compel the State Board to direct, through its executive director, that the Watauga County Board of Elections ("Watauga Board") immediately issue certificates of election to Petitioners pursuant to N.C. Gen. Stat. § 163-182.15(a).



2. Elections in North Carolina are conducted under the general supervision of gubernatorial appointees to the State Board, who oversee an executive director and agency staff located in Raleigh. The State Board also appoints members of county boards of elections, who administer elections across the state. See N.C. Gen. Stat. § 163-22.

3. Since June 1, 2017, the State Board has lacked seated members due to ongoing proceedings in *Cooper v. Berger, et al.*, 17 CVS 5084 (now on appeal as 52 PA 17-2), though elections operations have continued under statute and as provided under special orders entered by the Supreme Court.

4. The Watauga Board administered an election for the Town of Boone that included voting by mail, early voting at designated one-stop locations, and voting on Election Day (November 7, 2017). Early voting in Watauga County was conducted in accord with a one-stop implementation plan established by the Superior Court of Wake County on October 13, 2017 in *Anderson v. State Bd. Of Elections and Ethics Enforcement*, 17-CVS-12072. The plan included an early voting site at the Appalachian State University (ASU) campus.

5. Following the election, the Watauga Board canvassed results in a meeting held November 17, 2017, as provided by Gen. Stat. § 163-182.5. Canvassed results confirmed that Petitioners received the most votes in their respective contests.

6. On November 16, 2017, Anne-Marie Yates, a registered voter in Watauga County, timely filed an election protest with the Watauga Board under N.C. Gen. Stat. §163-182.9, seeking “[t]o nullify the 2017 Town of Boone Municipal Elections and hold a new election” on the basis that insufficient notice was given regarding the mandated one-stop site on ASU’s campus. The Watauga Board found that there was no probable cause of an irregularity and unanimously dismissed Ms. Yates’ protest by a written order filed November 21, 2017. On the same date, Ms. Yates, through counsel, filed a Notice of Appeal with the Watauga Board and purported to file an Election Protest Appeal with the State Board. Counsel for the State Board immediately notified Ms. Yates’ counsel, Nathan Miller, that, in the absence of a seated State Board, proper appeal lies with the Superior Court of Wake County. The letter also indicated applicable deadlines. Mr.

Miller subsequently disputed the same and contended his client was entitled to a ruling by seated members of the State Board before any subsequent proceeding, and, following receipt of filings in the instant case, he indicated to Respondent that he considered his client to be a necessary party in this action but filed no motions and did not appear.

#### CONCLUSIONS OF LAW

7. In the absence of appointed and sworn members of the State Board, decisions of the county boards of elections on election protests under Article 15A of Chapter 163 of the General Statutes are final and lack any additional administrative process. Appeal from any such decision lies with the Superior Court in Wake County within the deadline specified in N.C. Gen. Stat. § 163-182.14(b). All applicable deadlines governing Ms. Yates' protest have run, and no appeal is now pending.

8. Under the unique and narrow circumstance of a vacant State Board, the agency's inability to resolve petitions and act on other statutorily mandated matters are effectively denials from which review by this Court may be sought. The Court has inherent authority to supply necessary relief to parties whose legal rights are affected by a vacant State Board and to preserve the uniform and orderly operation of elections administration.

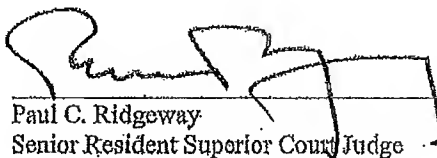
9. The deadline for delay of issuance of certifications of election in N.C. Gen. Stat. § 163-182.15(a) has expired. The Watauga Board has not issued certificates of election to the Petitioners and must now do so in the absence of a pending protest and lacking any stay entered by the Superior Court in Wake County. N.C. Gen. Stat. §§ 163-182.15(a), 163-182.15(a)(2), and 163-182.15(a)(3).

10. Mandamus is proper in this case. Petitioners have established a clear legal right to the immediate issuance of certificates of election under the present circumstances, and the State Board, though vacant, is obligated to effectuate the administration of elections in conformity with law. Mandamus directed at the vacant State Board is appropriate and may be executed by the agency's executive director.

IT IS THEREFORE ORDERED that:

1. The Petition for Writ of Mandamus is GRANTED.
2. The State Board of Elections & Ethics Enforcement, by and through its executive director, shall direct the Watauga Board of Elections immediately to issue certificates of elections to the prevailing candidates for Boone Town Council.

This the 14<sup>th</sup> day of December, 2017.



Paul C. Ridgeway  
Senior Resident Superior Court Judge

00433901

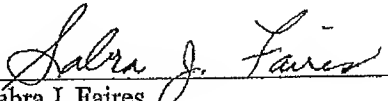
**CERTIFICATE OF SERVICE**

The undersigned attorney for Petitioners hereby certifies that on this day the foregoing **Order Issuing Writ of Mandamus** was served upon the North Carolina State Board of Elections & Ethics Enforcement by hand delivery and by email at the addresses below.

Mr. Josh Lawson  
General Counsel  
State Board of Elections & Ethics Enforcement  
Third Floor, Dobbs Building  
430 N. Salisbury St.  
Raleigh NC 27611  
[joshua.lawson@ncsbe.gov](mailto:joshua.lawson@ncsbe.gov)

James Bernier  
NC Department of Justice  
114 W. Edenton Street  
Raleigh, NC 27603  
[jbernier@ncdoj.gov](mailto:jbernier@ncdoj.gov)

This the 15<sup>th</sup> day of December, 2017.

  
Sabra J. Faires

WAKE COUNTY CLERK OF COURT

U242554 01/03/19 09:02:47

PAYOR: HARRIS, MARK  
PAYEE: WARD AND SMITH PA  
CASE#: 19CVS000025 VCAP:Y  
CITAN:

21120 SC-CIVIL FEES	179.05
21124 SC-CV LAA FEES	.95
24681 JUD TECH & FAC	4.00
22120 CO FAC FEE S CV	16.00

TOTAL PAID	200.00
CO TENDERED	200.00
CHANGE	.00

0318 ID C91NND